

**Hertling, Richard**

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**From:** Hertling, Richard  
**Sent:** Wednesday, January 17, 2007 4:34 PM  
**To:** Sampson, Kyle  
**Subject:** FW: Leahy Feinstein Response to 1/9/07 letter regarding appointments of US Attorneys

**Tracking:** Recipient    Read

Sampson, Kyle Read: 1/17/2007 4:36 PM

Do you want to handle the response to her?

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**From:** Duck, Jennifer (Judiciary-Dem) [mailto:Jennifer\_Duck@Judiciary-dem.senate.gov]  
**Sent:** Wednesday, January 17, 2007 11:36 AM  
**To:** Hertling, Richard; Cohen, Bruce (Judiciary-Dem)  
**Subject:** RE: Leahy Feinstein Response to 1/9/07 letter regarding appointments of US Attorneys

I am confused. The letter contains statistics that are different then what Kyle sent on Friday and we are finding differences between these two documents and the website and Congressional record. Can we set up a time to find out what exactly the status is?

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**From:** Hertling, Richard [mailto:Richard.Hertling@usdoj.gov]  
**Sent:** Tuesday, January 16, 2007 7:37 PM  
**To:** Cohen, Bruce (Judiciary-Dem); Duck, Jennifer (Judiciary-Dem)  
**Subject:** FW: Leahy Feinstein Response to 1/9/07 letter regarding appointments of US Attorneys

Bruce, Jennifer: this letter and fact sheet were just faxed to your offices. I wanted to send this via email as well.

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**From:** Cabral, Catalina  
**Sent:** Tuesday, January 16, 2007 7:24 PM  
**To:** Hertling, Richard  
**Subject:** Leahy Feinstein Response to 1/9/07 letter regarding appointments of US Attorneys

I've faxed this letter to both offices:

<<LeahyFeinsteinResponsetoJan.9.07 letterReApptsofUSAs.pdf>>

## Hertling, Richard

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**From:** Hertling, Richard  
**Sent:** Thursday, February 22, 2007 6:08 PM  
**To:** 'William\_K\_Kelley@who.eop.gov'  
**Cc:** Sampson, Kyle  
**Subject:** FW: Draft Schumer response per our conversation.

**Attachments:** schumer ears.wpd

Bill: per Kyle's request, I wanted to share the attached draft letter that I intend to send to Schumer tomorrow, assuming you are comfortable with it. The substance was worked out and concurred in by OLC, EOUSA, and ODAG. The request for access to the reports was made orally, so I do not have a written request to share with you. Obviously, this is a follow-up to the DAG's hearing and briefing on the termination of the several US Attorneys. Let me know at your earliest convenience if you have any comments or concerns. Thanks.

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**From:** Burton, Faith  
**Sent:** Thursday, February 22, 2007 5:17 PM  
**To:** Hertling, Richard  
**Subject:** Draft Schumer response per our conversation.



schumer ears.wpd  
(78 KB)



U.S. Department of Justice

Office of Legislative Affairs

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Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Charles E. Schumer  
Chairman  
Subcommittee on Administrative Oversight  
and the Courts  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

This supplements our previous response to your letter, dated February 14, 2007, which requested information relating to the Subcommittee's oversight interest in the recent requests to several United States Attorneys for their resignations.

In response to your prior request, which followed the Committee hearing of February 6, on this matter, and in an extraordinary effort to accommodate the Subcommittee's interests, the Deputy Attorney General briefed Committee Members on the reasons for the requested resignations. At that briefing on February 14, you requested access to the Evaluation and Review Staff (EARS) reports for the offices discussed by the Deputy Attorney General. As he stated at the briefing, these reports are not evaluations of the United States Attorneys themselves but, in some instances, they may contain relevant information that is responsive to the Subcommittee's interests in this matter.

The Department has substantial confidentiality interests in the EARS reports because they are an important management tool that relies upon the candor of participating individuals, both Evaluation Team members and those who provide information to them. In order to protect the continuing value of this process, we want to avoid disclosures that would chill such candor or the energetic conduct of these reviews. Accordingly, we appreciate your agreement to limit review of the reports to one staff member for the Chairman and one for the Ranking Member. We will redact the identities of the Evaluation Team participants as well as individuals who provided information to the Team in connection with each report, although we do not believe these redactions will in any way interfere with your ability to understand the reports. We further request that you advise us in advance if you believe it is necessary to disclose information from these reports outside of the Committee. While our public disclosure of information contained in these reports might be prohibited by the Privacy Act, we are providing access to the reports as described above in response to your oversight request and pursuant to 5 U.S.C. 552a(b)(9).

OLA000001635

The Honorable Charles E. Schumer  
Page 2

I hope this information is helpful. Please do not hesitate to contact this office if we can be of assistance in any other matter.

Sincerely,

Richard A. Hertling  
Acting Assistant Attorney General

cc: The Honorable Jeff Sessions  
Ranking Minority Member

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary

The Honorable Arlen Specter  
Ranking Minority Member  
Committee on the Judiciary

OLA000001636

Author	Hertling, Richard
Recipients	Sampson, Kyle
Subject	Re: Resignation of Another US Attorney
Date	2/23/2007 3:15:28 PM

FYI

-----Original Message-----

From: Cohen, Bruce (Judiciary-Dem) <Bruce\_Cohen@Judiciary-dem.senate.gov>  
 To: Hertling, Richard  
 Sent: Fri Feb 23 20:54:26 2007  
 Subject: Re: Resignation of Another US Attorney

Thx

-----Original Message-----

From: Hertling, Richard <Richard.Hertling@usdoj.gov>  
 To: Cohen, Bruce (Judiciary-Dem); Sampson, Kyle <Kyle.Sampson@usdoj.gov>  
 Sent: Fri Feb 23 18:30:24 2007  
 Subject: RE: Resignation of Another US Attorney

Bruce: we have always said 7 plus Arkansas. Till today, there had only been 6 (SD CA, ND CA, WD WA, D AZ, D NM, D NV) plus ED AR. The announcement today in WD MI is the 7th. The resignation announced today (which we are not confirming publicly as one of the 7) is the final one of the group asked to resign in December.

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From: Cohen, Bruce (Judiciary-Dem) [[mailto:Bruce\\_Cohen@Judiciary-dem.senate.gov](mailto:Bruce_Cohen@Judiciary-dem.senate.gov)]  
 Sent: Friday, February 23, 2007 5:45 PM  
 To: Hertling, Richard; Sampson, Kyle  
 Subject: Resignation of Another US Attorney

Has another US attorney been asked to resign, in addition to those we discussed in our initial meeting of 7 and Arkansas? Is the US attorney for the Western District of Michigan now part of this?

OLA000001637

## Hertling, Richard

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**From:** Hertling, Richard  
**Sent:** Friday, February 23, 2007 6:52 AM  
**To:** 'Eckert, Paul R.'; Oprison, Christopher G.  
**Cc:** Sampson, Kyle  
**Subject:** FW: Revised Draft

**Attachments:** Senator Levin and Senator Stabenow.doc

Here is the draft letter to Levin and Stabenow for your review and approval. Chiara is announcing her departure this morning, having talked to both senators yesterday. We would like to send this letter up to their offices this morning before she makes her announcement.

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**From:** Elston, Michael (ODAG)  
**Sent:** Thursday, February 22, 2007 7:35 PM  
**To:** Hertling, Richard  
**Cc:** Goodling, Monica; Moschella, William; Sampson, Kyle; McNulty, Paul J  
**Subject:** Revised Draft



Senator Levin and  
Senator Stab...

### Tracking:

#### Recipient

'Eckert, Paul R.'  
Oprison, Christopher G.  
Sampson, Kyle

#### Read

Read: 2/23/2007 7:15 AM

Dear Senator Levin and Senator Stabenow:

Thank you for your letter dated February 13, 2007. It is my understanding that Margaret Chiara spoke with you regarding this matter. As the Attorney General and the Deputy Attorney General have testified, the December 2006 decision to ask certain United States Attorneys whose four-year terms had expired to resign – including Ms. Chiara – was based on performance-related reasons. The Department has provided a detailed, confidential briefing to the members of the Senate Judiciary Committee regarding this matter. In short, the Department made management decisions that we believe are in the best interests of those offices.

The Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. We look forward to working with you to have a new Senate-confirmed United States Attorney in place as soon as possible.

Between now and March 16, 2007, which is the date Ms. Chiara's resignation becomes effective, the Administration must decide who will serve temporarily as United States Attorney until a new Senate-confirmed United States Attorney is nominated and confirmed. Because of the importance of continuity in the office, the Administration often looks to the First Assistant United States Attorney or another senior manager in the office to serve as acting or interim United States Attorney. Where neither the First Assistant United States Attorney nor another senior manager in the office is able or willing to serve as acting or interim United States Attorney, or where their service would not be appropriate in the circumstances, the Administration may look to other Department employees to serve as interim United States Attorney.

Sincerely,

Richard A. Hertling  
Acting Assistant Attorney General

## Hertling, Richard

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**From:** Hertling, Richard  
**Sent:** Friday, February 23, 2007 7:00 AM  
**To:** Sampson, Kyle  
**Subject:** Levin-Stabenow letter

Kyle: I just spoke to Eckert in WHCO and he has the letter and his initial impression is no problem. He will talk to Fielding at their 8 a.m. and should get back to us shortly thereafter.

<b>Tracking:</b>	<b>Recipient</b>	<b>Read</b>
	Sampson, Kyle	Read: 2/23/2007 7:15 AM



## Hertling, Richard

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**From:** Hertling, Richard  
**Sent:** Tuesday, February 27, 2007 7:17 PM  
**To:** 'Kelley, William K.'  
**Cc:** Oprison, Christopher G.; Sampson, Kyle  
**Subject:** RE: Sorry to be a pest

Many thanks, sir.

-----Original Message-----

**From:** Kelley, William K. [mailto:William\_K.\_Kelley@who.eop.gov]  
**Sent:** Tuesday, February 27, 2007 7:16 PM  
**To:** Hertling, Richard  
**Cc:** Oprison, Christopher G.  
**Subject:** Re: Sorry to be a pest

Sorry -- thought I had cleared it earlier today. Good to go. Thanks.

-----Original Message-----

**From:** Hertling, Richard  
**To:** Kelley, William K.  
**CC:** Oprison, Christopher G.  
**Sent:** Tue Feb 27 19:15:15 2007  
**Subject:** Sorry to be a pest

Bill: Because the letter to Conyers I emailed to you earlier today in response to his request that we appoint Carol Lam as special counsel for the Duke Cunningham investigation makes reference to a briefing DOJ is doing for House Judiciary members tomorrow in the future tense, I would like to be able to sign the letter and date it today. Have your folks had the chance to look it over yet? Are you comfortable with it?

Tracking:	Recipient	Read
	'Kelley, William K.'	
	Oprison, Christopher G.	
	Sampson, Kyle	Read: 2/27/2007 7:25 PM

## Hertling, Richard

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**From:** Hertling, Richard  
**Sent:** Thursday, March 01, 2007 2:26 PM  
**To:** Tracci, Robert N  
**Subject:** RE: USAs

Actually, in his case, is was performance issues rather than policy ones. He was a poor manager.

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**From:** Tracci, Robert N  
**Sent:** Thursday, March 01, 2007 2:21 PM  
**To:** Hertling, Richard  
**Subject:** USAs

"But Roehrkasse said Justice 'had a lengthy record from which to evaluate his performance as a manager, and we made our decision not to further extend his service based on performance-related concerns.'"

HJC and SJC will subpoena all performance-related documents and question USAs about their performance. Obviously, subpoenaed USAs are unlikely to readily admit to anything other than stellar performance. HJC and SJC may invite/subpoena Comey, certainly other character type witnesses will testify in an effort to establish a hearing record to demonstrate that performance-related claims are false.

<http://www.nytimes.com/2007/03/01/washington/01attorney.html>

**Tracking:** Recipient  
Tracci, Robert N

**Read**  
Read: 3/1/2007 2:42 PM

## Hertling, Richard

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**From:** Hertling, Richard  
**Sent:** Monday, March 05, 2007 1:48 PM  
**To:** 'Frech, Christopher W.'  
**Subject:** RE:

That is correct. They may not yet know if all the USAs are coming. I am not sure. We are also waiting to hear back on our insistence that Will testify on his own panel first.

-----Original Message-----

**From:** Frech, Christopher W. [mailto:Christopher\_W.\_Frech@who.eop.gov]  
**Sent:** Monday, March 05, 2007 1:44 PM  
**To:** Hertling, Richard  
**Subject:** RE:

The Website has only the below, But Will is testifying for DOJ and they subpoenaed the four USAs correct?

T. J. Halstead  
Legislative Attorney American Law Division, Congressional Research Service  
John A. Smietanka  
Attorney at Law (Former U.S. Attorney for the Western District of Michigan)  
Altee W. Wampler III  
2006-2007 President of the National Association of Former United States Attorneys

-----Original Message-----

**From:** Hertling, Richard [mailto:Richard.Hertling@usdoj.gov]  
**Sent:** Monday, March 05, 2007 1:43 PM  
**To:** Frech, Christopher W.  
**Subject:** Re:

No, we have not seen one yet to my knowledge.

-----Original Message-----

**From:** Frech, Christopher W. <Christopher\_W.\_Frech@who.eop.gov>  
**To:** Hertling, Richard  
**Sent:** Mon Mar 05 13:39:52 2007  
**Subject:** RE:

Do you have the witness list for the USA hearing tomorrow?

-----Original Message-----

**From:** Hertling, Richard [mailto:Richard.Hertling@usdoj.gov]  
**Sent:** Friday, March 02, 2007 8:05 PM  
**To:** Frech, Christopher W.  
**Subject:** RE:

-----Original Message-----

**From:** Frech, Christopher W. [mailto:Christopher\_W.\_Frech@who.eop.gov]  
**Sent:** Friday, March 02, 2007 8:03 PM  
**To:** Hertling, Richard  
**Subject:** Re:

Thanks Richard, [

-----Original Message-----

From: Hertling, Richard  
To: Frech, Christopher W.  
Sent: Fri Mar 02 18:44:50 2007  
Subject: RE:

Chris: on the House hearing, we have sent Will Moschella's testimony to OMB for clearance. [

-----Original Message-----

From: Frech, Christopher W. [mailto:Christopher\_W.\_Frech@who.eop.gov].  
Sent: Friday, March 02, 2007 4:50 PM  
To: Hertling, Richard  
Subject: RE:

Any update on this? Thanks -- Frech

-----Original Message-----

From: Hertling, Richard [mailto:Richard.Hertling@usdoj.gov]  
Sent: Friday, March 02, 2007 8:42 AM  
To: Frech, Christopher W.  
Subject: Re:

Will do.

-----Original Message-----

From: Frech, Christopher W. <Christopher\_W.\_Frech@who.eop.gov>  
To: Hertling, Richard  
Sent: Fri Mar 02 08:39:03 2007  
Subject: RE:

OK can you please keep me in the loop on this

-----Original Message-----

From: Hertling, Richard [mailto:Richard.Hertling@usdoj.gov]  
Sent: Friday, March 02, 2007 8:38 AM  
To: Frech, Christopher W.  
Subject: Re:

We have had some preliminary conversations and will be meeting internally today to finalize questions and strategy to provide HJC Rs. They will get all of that later today.

-----Original Message-----

From: Frech, Christopher W. <Christopher\_W.\_Frech@who.eop.gov>  
To: Hertling, Richard  
Sent: Fri Mar 02 08:35:59 2007  
Subject:

Good morning Richard, regarding the Tuesday hearing with the USAs, have you had any conversations with the committee and specific members on strategy, etc?

**Hertling, Richard**


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**From:** Hertling, Richard  
**Sent:** Tuesday, March 06, 2007 9:08 AM  
**To:** 'Oprison, Christopher G.'; Sampson, Kyle  
**Subject:** RE: Kennedy & Schumer QFR's to DAG McNulty

**Tracking:** **Recipient**                      **Read**  
                   'Oprison, Christopher G.'  
                   Sampson, Kyle                      Read: 3/6/2007 9:16 AM

I am not sure where things stand, but I do not expect a circulation of draft responses within the next week at least. Frankly, our priority right now is the 450 QFRs the AG got in January, a large batch of which should be heading to OMB this week for clearance, and the FBI Director's 350 QFRs from his December hearing, which all should be heading to OMB by the end of this week. We hope to get both of these big sets ready to go to OMB, so they are taking much immediate time.

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**From:** Oprison, Christopher G. [mailto:Christopher\_G.\_Oprison@who.eop.gov]  
**Sent:** Tuesday, March 06, 2007 9:05 AM  
**To:** Sampson, Kyle; Hertling, Richard  
**Subject:** RE: Kennedy & Schumer QFR's to DAG McNulty

Kyle, Rich - question came up about the status of draft responses to Kennedy and Schumer QFRs. Can you let me know when you expect them to be circulated for clearance? Thanks

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**From:** Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]  
**Sent:** Monday, February 26, 2007 10:59 AM  
**To:** Kelley, William K.  
**Cc:** Oprison, Christopher G.; Hertling, Richard  
**Subject:** FW: Kennedy & Schumer QFR's to DAG McNulty

Gents, wanted to you see the flavor of the QFRs we've received on the U.S. Attorneys matter. We obviously will need to clear answers through you all.

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**From:** Scott-Finan, Nancy  
**Sent:** Monday, February 26, 2007 10:49 AM  
**To:** Sampson, Kyle  
**Cc:** Hertling, Richard  
**Subject:** FW: Kennedy & Schumer QFR's to DAG McNulty

Attached are the QFRs

## Hertling, Richard

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**From:** Hertling, Richard  
**Sent:** Tuesday, March 06, 2007 10:12 AM  
**To:** Elwood, Courtney; Moschella, William; Sampson, Kyle; Goodling, Monica  
**Subject:** RE: Call from Bill Kelley on QFR responses on USA firings

Yes, and nothing is moving very quickly. I emailed Oprison about that subject this morning.

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**From:** Elwood, Courtney  
**Sent:** Tuesday, March 06, 2007 10:11 AM  
**To:** Moschella, William; Sampson, Kyle; Hertling, Richard; Goodling, Monica  
**Subject:** Call from Bill Kelley on QFR responses on USA firings  
**Importance:** High

Bill called this morning and spoke to me in Kyle's absence. Chris Oprison told Bill that DOJ was preparing QFR answers that addressed contacts between WH, Hill, and DOJ on USAs. He wants to make sure that he is given, in advance, whatever DOJ plans to say in response to these questions. I told him that QFR responses are always circulated through OMB and WHCO, and I am sure that happen in this case.

I know nothing 'bout this, so I pass this along to those of you who may.

I suggest that Kyle or someone else give Bill a call for clarification, if necessary.

*Courtney Simmons Elwood*  
*Deputy Chief of Staff and*  
*Counselor to the Attorney General*  
*U.S. Department of Justice*  
*(w) 202.514.2267*  
*(c) 202.532.5202*  
*(fax) 202.305.9687*

Tracking:	Recipient	Read
	Elwood, Courtney	Read: 3/6/2007 10:12 AM
	Moschella, William	Read: 3/13/2007 2:48 PM
	Sampson, Kyle	Read: 3/6/2007 10:36 AM
	Goodling, Monica	Read: 3/13/2007 10:10 AM